

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE TALC-BASED POWDER
PRODUCTS LITIGATION**

MDL No. 3:16-md-02738

**NOTICE OF MOTION TO FILE
BRIEF UNDER SEAL**

TO: *All Counsel of Record*

COUNSEL:

PLEASE TAKE NOTICE that Defendants Johnson & Johnson and LLT Management, LLC, f/k/a LTL Management, LLC (collectively, “J&J” or “Defendants”), will move before this Court as soon as counsel may be heard, pursuant to Local Civil Rule 5.3(c), for an Order permitting Defendants to file under seal an unredacted copy of their post plenary hearing Brief regarding disqualification of Andy Birchfield and Beasley Allen.

PLEASE TAKE FURTHER NOTICE that, in support of this Motion, Defendants will rely upon the accompanying Letter Brief of Susan Sharko.

PLEASE TAKE FURTHER NOTICE that a Proposed Order is attached.

PLEASE TAKE FURTHER NOTICE that oral argument is requested if opposition is filed.

Respectfully submitted,

/s/ Susan M. Sharko

Susan M. Sharko

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*Attorneys for Defendants Johnson &
Johnson and LLT Management, LLC,
f/k/a LTL Management, LLC*

Dated: May 17, 2024

CERTIFICATION OF SERVICE

I hereby certify that on May 17, 2024, a copy of the foregoing documents were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access the filing through the Court's system.

/s/ Sean C. Garrett

Sean C. Garrett

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Via ECF

May 17, 2024

Honorable Rukhsanah L. Singh, U.S. Magistrate Judge
United States District Court- District of NJ
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street, Court Room 7W
Trenton, NJ 08608

**Re: *In re: Johnson & Johnson Talcum Powder Products
Marketing, Sales Practices and Products Liability Litigation -
MDL 2738***

Dear Magistrate Judge Singh:

I write on behalf of the Johnson & Johnson Defendants in support of Defendants' application to file under seal an unredacted copy of Defendants' post plenary hearing Brief regarding the request for disqualification of Andy Birchfield and Beasley Allen. Your Honor, in conjunction with Judge John C. Porto, Presiding Judge of the Civil Division of the Superior Court of Atlantic County, New Jersey, held a plenary hearing on J & J's Motion to Disqualify Andy Birchfield and Beasley Allen from representing plaintiffs in the Talcum Powder Litigation over the course of three days; March 25, 2024; April 10, 2024; and May 3, 2024. The Courts directed J&J to provide any confidential/privileged impeachment material for *in*

camera review to be later addressed by the Courts. See **Exhibit A**, Excerpts of Transcript of April 10, 2024, plenary hearing, 52:8-13. Due to the confidentiality and privilege protections governing those billing records, affidavits/certifications authenticating and explaining those records, and e-mails, the materials were submitted to the Courts for *in camera* review on or about May 1, 2024, and labeled “Attorneys’ Eyes Only”.

After conclusion of the plenary hearing on May 3, 2024, the Courts ruled that the materials submitted on May 1, 2024, should be treated as Attorneys Eyes Only to “maintain the privilege that’s been asserted.” See **Exhibit B**, Excerpts of Transcript of May 3, 2024, plenary hearing, 160:14-15. Furthermore, the Courts directed the parties at the May 3, 2024, hearing to file under seal their post plenary hearing brief in the event the brief “addresses something substantive that has been submitted with that [Attorneys’ Eyes Only] designation.” *Id.*, at 161:1-8.

On May 17, 2024, J&J filed a redacted version of their post plenary hearing Brief regarding disqualification of Andy Birchfield and Beasley Allen. The redactions in the Brief concern, *inter alia*, the impeachment materials referenced above.


In accordance with the Courts’ directive to file the Brief under seal due to the references to the impeachment materials, J&J seeks permission to file an unredacted version of their post plenary hearing Brief under seal. The filing of an

unredacted version of Defendants' Brief under seal comports with the requirements of L. Civ. R. 5.3(c), which permits sealing of materials when a party has shown disclosure would cause injury, a less restrictive alternative is not available, and a legitimate private interest which warrants the relief sought.

Defendants submit disclosure of the substance of billing records and communications of one of its previous attorneys would reveal confidential information regarding this litigation as well as confidential business practices. Moreover, the Courts have already determined that these materials submitted *in camera*, including reference to them in the post plenary hearing Brief, maintain their privilege and are worthy of being filed under seal. See **Exhibit B**.

Accordingly, Defendants respectfully request the Court grant permission to file an unredacted version of Defendants' post plenary hearing Brief under seal.

Respectfully,

/s/ 

Susan M. Sharko

SMS/scg